

THE GOVERNOR'S RECOMMENDED BUDGET: OFFICE OF INDIGENT DEFENSE SERVICES

March 26, 2013

\$5 Million Non-Recurring PAC Funds

"The [additional PAC] funds will reduce a budget shortfall accumulated over several years that creates a hardship for small business legal firms whose payments are suspended when state resources are exhausted before the end of the fiscal year."

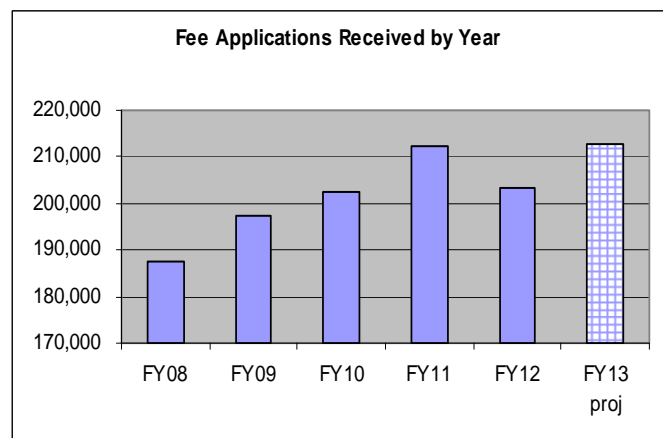
– Governor Pat McCrory's Recommended Budget

- The Governor's recommended \$5 million non-recurring increase in funding for Private Assigned Counsel (PAC) would be tremendously helpful in meeting IDS' constitutional and statutory obligations.
- The existing PAC funding shortfall dates back to FY11. IDS ended FY11 and FY12 with almost \$10 million of debt. IDS is projected to end this FY with \$7 to \$8 million of debt, which will mean that IDS lived within its recurring budget this fiscal year *and* chipped away at the historical debt.
- IDS has been able to live within its current recurring budget in part because the IDS Commission dramatically reduced the hourly rates that are paid to PAC in May 2011. Particularly in district court, the current rates are at unsustainably low levels that barely cover the overhead of running a small law firm.

Case Type	IDS Rates 2001	IDS Rates 2006	IDS Rates 2008	IDS Rates 2011 to Present
Potentially Capital Cases	\$85	\$95	\$95	\$85 (\$75 after a non-capital declaration)
High-Level Felonies (Class A-D)	\$65	\$65	\$75	\$70
All Other Superior Court Cases	\$65	\$65	\$75	\$60
All Other District Court Cases	\$65	\$65	\$75	\$55

The rate reductions generated approximately \$12.6 million in savings during FY12 and a projected \$15.6 million in savings this FY. At this time, most non-capital fees are being paid at the reduced rates. PAC should not have to endure payment delays on top of significant rate reductions.

- IDS has implemented a number of other cost control measures that are documented on the attached fact sheet, and has benefited from an atypical decrease in demand during the past 12 to 18 months. Demand now appears to be increasing again and IDS is projecting modest real growth for the rest of this FY and next FY.



- The shift to a large-scale contract system will contain costs in the long-term:
 - ✓ IDS set the fees for handling caseload units lower than the reduced PAC hourly rates with an expectation that contract attorneys will gain efficiencies.
 - ✓ As of December 2013, 16% of non-capital PAC spending will have shifted to the new contract system.

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- Even with the recommended increase, IDS will likely have a shortfall at the end of the next two fiscal years.

	FY13	FY14	FY15
PAC Shortfall Under Governor's Budget	\$7 to \$8 million	\$2 to \$3 million	\$3 to \$5 million

A continuing funding shortfall would be due to a variety of factors, including:

- ✓ Continuing slow growth in the demand for IDS' services, including providing counsel for the Governor's recommended expansion of drug treatment courts
- ✓ Less funds available to transfer to the PAC fund at year end:
 - \$258,634 reduction from "streamlin[ing] public defender and administrative operations"
 - No continuation budget adjustments for rent, longevity, etc.
- ✓ Decreased recoupment revenues as a result of lower PAC rates and the shift to contracts
- ✓ Increasing complexity of the law and forensic science
- ✓ Increasing criminalization of behavior and criminal penalties
- ✓ Increasing demand for out-of-court interpretation and translation, court exhibits, transcripts, and experts

Public Defender Office Case Management System

"Technology systems are critical to maintain the timely and efficient operation of the judicial system."

– Governor Pat McCrory's Recommended Budget

- The Governor's recommended \$369,965 in recurring funds plus \$43,080 in non-recurring funds to upgrade and maintain the public defender offices' Case Management System (CMS) will make those offices more efficient.
- The existing CMS uses outdated technology and is causing increasing problems with incompatibility. The recommended funds will be used to modernize the system by creating a web-based database comparable to the systems that AOC has created for the district attorneys and clerks.
- AOC has informed IDS that it will need six Information Technology positions for the first nine months of development, and three positions to maintain the system over time. Those positions would be funded by IDS, but supervised by AOC.
- In light of the significant shortfall in the PAC Fund, IDS will not be able to fund this project without dedicated expansion funding.

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North Carolina Prisoner Legal Services

"The contract amount with Prisoner Legal Services is altered to reflect the declining number of inmates incarcerated in the state's prison system."

– Governor Pat McCrory's Recommended Budget

- In a case brought against the then-Department of Correction—*Bounds v. Smith*—the United States Supreme Court established that all prisoners have a constitutional right to meaningful access to the courts. The State began contracting with North Carolina Prisoner Legal Services (NCPLS) in 1989 as part of a later settlement to enforce that constitutional right.
- The Governor's recommended reduction to NCPLS' budget represents a significant reduction of almost 8%.
- While it is true that the inmate population has declined in recent years, it is significantly higher than it was in 1998, when NCPLS was funded at the same level in 2013 dollars.

	CY1998	CY2004	CY2009	CY2013
Number of DAC Inmates	31,881	35,756	40,133	37,586
Number of NCPLS Staff Attorneys (funded through contract with IDS)	16	18	19	19
Cost of NCPLS' Contract (in Actual Dollars)	\$1.97 M	\$2.51 M	\$2.89 M	\$2.89M
Cost of NCPLS' Contract (in 2013 Dollars)	\$2.8 M	\$3.09 M	\$3.13 M	\$2.89M

- Because 80% of NCPLS' budget is personnel, the recommended reduction would mean:
 - ✓ NCPLS would have to lay off four paralegals and eliminate all jail credit work. In 2012, NCPLS corrected jail credit errors totaling 13,319 days. At the most recent daily cost of incarceration calculated by the Division of Adult Correction (\$76.02 per day), NCPLS generated more than \$1 million in savings last year, which is far more than the recommended reduction.
 - ✓ NCPLS would have to eliminate one attorney position and one intake position, which would cause delays in responding to inmate requests and result in inmates being illegally incarcerated past their lawful release date or in inmates missing the statute of limitations on meritorious claims.
- For more information about NCPLS' work, please see the attached fact sheet.

CONTROLLING INDIGENT DEFENSE COSTS



IDS has implemented a number of initiatives to control spending and contain the costs of providing constitutionally and statutorily mandated legal services. However, much of IDS' spending is driven by factors beyond IDS' control.

IDS Cost Saving Efforts:

All Cases:

- ❖ Reduced private assigned counsel (PAC) rates effective May 2011:

Case Type	Hourly Reduction
Potentially Capital	\$10
Serious Felonies	\$5
Other Superior Court	\$15
Other District Court	\$20

- ❖ Worked with AOC to establish a uniform hourly rate schedule for experts by specialty and education
- ❖ Targeted expansion of defender offices and programs
- ❖ Created in-house specialized resources, such as Forensic Resource Counsel, so that attorneys around the State do not have to “reinvent the wheel” in individual cases
- ❖ Reimburse mileage at \$.35/mile (lower than state and IRS rates)

Capital Cases:

- ❖ Set pre-trial spending limits for attorneys and some defense experts unless a case has been declared “exceptional” by the IDS Director, and require pre-trial budgets in the most serious and complex potentially capital cases
- ❖ Decrease hourly rate after potentially capital cases are declared non-capital
- ❖ Require prior IDS approval for experts and support services in potentially capital cases
- ❖ Suspended pass-through grant funding to Center for Death Penalty Litigation, and moved key functions in-house at lower cost

Non-Capital and Non-Criminal Cases:

- ❖ Uniform billing policies and education
- ❖ In some districts, use “attorneys for the day,” flat per case fees, and targeted contracts
- ❖ Return without payment court orders granting fees in cases where there is no authority to pay, such as infractions and GALs in some civil cases
- ❖ Require prior approval for large translation requests
- ❖ Building cost savings, best practices, and quality assurances into new contract system

Training:

- ❖ Shifted to more webinars and on-line training programs
- ❖ Cancelled fall public defender conference, moved spring conference to central location, and require carpooling to major training events
- ❖ Obtained grant funding for special training programs

Defender Offices and IDS Office:

- ❖ Restricted salary increases in defender offices and IDS Office
- ❖ Delayed replacement of computers, equipment, and books

External Factors Increasing IDS Costs:

- ❖ Increasing complexity of applicable laws, including collateral consequences
- ❖ Increasing complexity of forensic sciences and problems identified in audit of State Bureau of Investigation laboratory
- ❖ Increasing costs associated with accessing and reviewing voluminous digital discovery
- ❖ Increasing criminalization of behavior and criminal penalties
- ❖ Increasing statewide rates of poverty and indigency
- ❖ Shift of responsibility from AOC to IDS for funding defense lay witnesses and out-of-court foreign language interpreters
- ❖ Increasing cost of written translations, including audio and video interrogations in Spanish
- ❖ Increasing costs of office rent, supplies, and books
- ❖ Aging and inadequate equipment, such as slow computers and obsolete case management software
- ❖ Loss of some outside support, such as county-funded positions in defender offices

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NORTH CAROLINA PRISONER LEGAL SERVICES



	FY12
Number of DAC Inmates	37,000+
Number of DAC Prisons Served	66
Number of Inmate Requests Handled	12,166
Number of NCPLS Attorneys (funded through contract with IDS)	19
Cost of NCPLS' Contract	\$2.89M

Overview: North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to inmates. Through its contract with IDS, NCPLS serves a population of more than 37,000 prisoners in the custody of the Division of Adult Correction (DAC) by providing information and advice concerning their legal rights, working toward administrative resolutions of inmate problems, and providing representation in court.

In a case brought against the Department of Correction (DOC)—*Bounds v. Smith*—the U.S. Supreme Court established that all prisoners have a constitutional right to meaningful access to the courts. The State began contracting with NCPLS in 1989 as part of a later settlement to enforce that constitutional right.

North Carolina also provides a statutory right to counsel for post-conviction review under certain circumstances, and NCPLS accepts appointments to represent defendants in cases in which superior court judges have ordered evidentiary hearings.

Post-Conviction Cost Effectiveness: NCPLS is a cost-effective way to meet North Carolina's constitutional and statutory obligations to provide inmates with meaningful access to the courts.

- ❖ Because of the complexity of the State's structured sentencing scheme, NCPLS often identifies sentencing errors that, once corrected, save months or years of incarceration for persons whose prior record levels were miscalculated.
- ❖ In 2012, NCPLS corrected jail credit errors totaling 13,319 days. At the most recent daily cost of incarceration calculated by the DAC (\$76.02 per day), NCPLS generated more than \$1 million in savings.

Civil Conditions of Confinement:

- ❖ *Cases covered:* NCPLS evaluates inmate claims and, in appropriate cases, represents inmates in civil cases involving conditions of confinement, such as the provision of inadequate medical care, cases involving sexual abuse by prison guards and negligent failure to protect, and the application of gain time credits for disabled inmates.
- ❖ *Cases not covered:* While NCPLS provides some *pro se* packets to inmates in other cases, such as divorces, they do not provide any direct representation in matters unrelated to the constitutionality of conditions of confinement.

Post-Conviction and Civil: In addition to the calculable cost savings generated by NCPLS, the organization saves the State money and resources by resolving legitimate inmate concerns through negotiation with prosecutors and the DAC, and by discouraging frivolous inmate litigation by explaining to inmates the boundaries of their legal rights.

Grant Funded Programs:

- ❖ *Safe and Humane Jails Project:* Works to ensure that inmates in local jails are treated safely and humanely.
- ❖ *Incarcerated Youth Advocacy Project:* Represents juveniles in the custody of the Division of Juvenile Justice.

Alternative is More Costly: Without NCPLS, the State would have to provide law libraries and persons trained in the law at DAC facilities. This would be more costly than NCPLS, and would result in a system that is highly unlikely to identify legitimate claims. It would also increase the burden on the courts caused by frivolous *pro se* litigation.

IDS Oversight: In 2005, the General Assembly transferred the responsibility to provide inmates with meaningful access to the courts from DOC to IDS. NCPLS provides IDS with quarterly reports documenting work done pursuant to its contract, as well as budgetary information and annual fiscal audit reports.

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